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In the High Court of Punjab and Haryana at Chandigarh.

I.T. Reference No.115 of 1990.
Date of decision : 16.5.2007.

Smt.Kaushalya Wati & Sh Vijay Kumar legal heirs of
Shri Ram Kumar (Decd.), C/o M/s. Kesar Da Dhaba, Chowk Passian, Amritsar.

...Petitioner.

vs.

The Commissioner of Income-Tax, Amritsar.

...Respondent.

Coram: **Hon'ble Mr. Justice M.M.Kumar.**
Hon'ble Mr. Justice Rajesh Bindal.

Present: Mr.Avneesh Jhingan, Advocate,for the petitioner.
Mr.Sanjiv Bansal,Advocate,for the respondent.

Rajesh Bindal, J.

Following question of law has been referred for opinion of this court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, "The Tribunal), arising out of its order dated 30.9.1985, passed in I.T.A. No.673/ ASR/1984, in respect of assessment year 1977-78:-

> *"Whether on the facts and in the circumstances of the case, the addition made in the assessment year 1977-78 can be sustained in the light of section 69-A of the Income-Tax Act ?"*

Briefly, the facts are that on 14.8.1976, a search was conducted under Section 132 of the Income Tax Act, 1961 (for short "the Act"), at the residential premises of the assessee. During the course of search, currency notes worth Rs. 56,100/- were found, out of which Rs. 55,400/- were seized. Jewellery weighing 120 grams, though found but was not seized. After the

search and seizure operations, the assessee filed his returns of income for the assessment years 1974-75 to 1976-77, declaring his income as Rs. 16,000/-, Rs. 18,000/- and Rs. 16,000/- respectively. The assessments were duly framed. During the course of assessment proceedings for the assessment year in question, the assessee was asked to explain the source of cash amount of Rs. 56,100/-, which was found at the time of search and seizure operations at the residential premises. In response to the query, the assessee submitted that the same represented his savings from the income declared/ assessed for the assessment years 1974-75 to 1976-77. He further submitted that once the returns filed by the assessee for the years referred to above have already been assessed, the assessee is entitled to be given the benefits of carry forward cash in hand for the currency in question, which completely explains the availability of the cash found at the time of search and seizure operations. However, at the time of giving the benefits, the assessing officer partially accepted the version while giving benefits of savings of Rs. 10,000/- as carry forward cash from earlier years and confirmed the addition of Rs. 46,100/- as unexplained cash found. The Appellate Assistant Commissioner, in appeal, accepted the version of the assessee and deleted entire addition while holding that the returns filed by the assessee even after the search, which have been accepted by the department, could not be discarded and the assessee was entitled to the benefits arising therefrom.

In further appeal by the revenue before the Tribunal, the addition was again confirmed. However, the amount thereof was reduced from Rs. 46,100/- to Rs. 41,000/- giving further relief of Rs. 5100/- in addition to what was given by the assessing officer.

We have heard learned counsel for the parties and with their assistance have perused the paper-book.

The undisputed facts on record are that after the search and seizure operations were carried out at the premises of the assessee and currency notes worth Rs. 56,100/- were found, the assessee with a view to explain the same filed his returns of income for the previous assessment years namely 1974-75 to 1976-77, which were duly accepted by the revenue by framing assessments. A perusal of the claims made by the assessee

during the previous years reveals that cash in hand of Rs. 52,000/- was available with the assessee as on 31.3.1976 i.e. at the opening of the financial year, relevant to the assessment year in question. Once the revenue had accepted the returns for the previous years, the net result thereof would be that the assessee will be entitled to the benefits thereof during the assessment year in question in support of the explanation of the assessee. To explain the cash found at the time of search at the residence of the assessee, there was nothing brought on record by the revenue to suggest that the cash so generated or declared by the assessee during the previous years was, infact, invested by the assessee somewhere else and that could not possibly be available with him on the date of search.

Section 69-A of the Act provides that where any money, bullion, jewellery or valuable articles is found in the possession of an assesee and no explanation is offered about the nature and source thereof, the same shall be treated to be his income for the financial year in question. It is evident from record in the present case that the money found in cash at the time of search was explained by the assessee in the form of carry forward savings from the previous years in the returns filed by him which were duly accepted by the revenue. Once a carry forward cash is accepted, there was no reason for not giving the benefits to the assessee for the same in a subsequent year as opening balance. The Tribunal ignoring this admitted factual position on record has merely referred to the fact that if sufficient cash is found during the year in question, there was no occasion for him to withdraw Rs. 5,300/- in cash from M/s. Kesar-Da-Dhaba, where the assessee was a partner, during the year 1976-77, and Rs. 5,200/- in 1977-78. It has further mentioned that the assessee could very well deposit the same with the bank to earn the interest. Withdrawal of amount from the firm Kesar-Da-Dhaba has been explained by the assessee with the plea that in the firm he was a partner and he also withdrew his share as other partners did. Accordingly, nothing hinges on the same. Such probability would not take precedence over the concrete documentary evidence on record which was available in the form of returns. There is no reason to deny the assessee the benefits of the cash available with him at the close of the previous assessment year while framing the assessment for the year in question.

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For the reasons recorded above, we find that the findings recorded by the Tribunal are perverse. Accordingly, the question referred is answered in favour of the assessee and against the revenue.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

16.5.2007. **(M.M.Kumar)**
vs. **Judge.**